

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE MARCELINO GARCIA,

Defendant and Appellant.

E067047

(Super.Ct.No. FVI1102553)

OPINION

APPEAL from the Superior Court of San Bernardino County. Victor R. Stull,
Judge. Affirmed.

Tyrone Sandoval, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL BACKGROUND

On November 7, 2011, a complaint charged defendant and appellant Jesse Marcelino Garcia with threatening a witness under Penal Code¹ section 140, subdivision (a), a felony (count 1); making criminal threats under section 422, a serious felony (count 2); and misdemeanor cruelty to a child by inflicting injury under section 273a, subdivision (b) (count 3). The complaint also alleged that, as to counts 1 and 2, defendant suffered prior serious or violent felony convictions under section 1170, subdivision (h)(3); and suffered a prior conviction of a serious or violent felony or juvenile adjudication pursuant to sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i).

On January 7, 2013, the complaint was amended by interlineation to allege a new count 4, a violation of section 273a, subdivision (a), willful harm or injury to a child. Thereafter, pursuant to a plea agreement, defendant pled guilty to counts 2 and 4. The trial court sentenced defendant to the upper term of three years on count 2 (criminal threats), and the midterm of four years on count 4 (child endangerment), to run concurrently. The court then suspended execution of the sentence and placed defendant on probation for four years.

¹ All statutory references will be to the Penal Code unless otherwise specified.

On October 12, 2016, the trial court held a *Vickers* hearing, found that defendant violated probation, revoked defendant's probation, denied mandatory supervision, and imposed the suspended four-year sentence.

On October 13, 2016, defendant filed his timely notice of appeal. He indicated that his "appeal is after a contested violation of probation."

B. VICKERS HEARING

Beginning in March of 2016, defendant failed to report for several weekly probation meetings, violating his probation terms. Moreover, in August 2016, a probation officer checking in on another probationer at a residence encountered defendant; defendant was found with a weapon consisting of a padlock tied to a bandana, in violation of his probation terms. During the encounter, defendant admitted that he violated his probation by using methamphetamine two weeks prior.

Defendant called witnesses and testified that he was planning to move into his mother's garage, he had the padlock in order to lock the garage, and he did not intend to use the padlock as a weapon. He had only missed three probation meetings. On those occasions, he called a probation officer who told defendant to meet with probation the following day. Defendant admitted using methamphetamine between one and one-half and two months ago, after a probation officer asked defendant about drug use and promised not to violate defendant's probation if defendant admitted use.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979)

25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER

J.

We concur:

RAMIREZ

P. J.

FIELDS

J.